

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-25, 30, 32-56, and 71-83 are pending, with Claims 2, 3, 14-16, 21, 23-25, 46-48, 53, 55, 56 and 72 being withdrawn from consideration. None of the claims, specification or drawings are amended by way of this response.

In the Office Action, Claims 1, 4-6, 13, 17-20, 22, and 80 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang (U.S. Patent No. 6,343,717) in view of Muhar (U.S. Patent No. 6,254,294); Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Muhar and Zygmunt (U.S. Patent No 6,488,646); Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Muhar and Barabino (U.S. Patent No. 4,740,194); Claims 11 and 12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Muhar and Tobin (U.S. Patent No 3,792,699); Claims 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 and 81-83 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhang in view of Schindler (U.S. Patent No. 6,358,231); Claims 39, 40 and 77 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler and Zygmunt; Claims 41 and 42 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler and Barabino; Claims 43 and 44 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler and further in view of Tobin; Claims 32-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhang in view of Schindler and Barr (U.S. Patent No. 6,812,254); Claim 75 was rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of

Schindler, Lewis, Ohsumi (US Patent No. 5,658,981); and Claims 78 and 79 are rejected under 35 U.S.C. §103(a) as unpatentable over Zhang in view of Schindler and Lewis.

The rejection of Claims 1, 4-6, 13, 17-20, 22, and 80 under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Muhar is traversed.

Claim 1 relates to an evaluation or diagnostic kit. Claim 1 recites that the evaluation or diagnostic kit includes *a plurality of applicators containing different test substances and a housing in which the applicators are housed*.

Turning to the applied references, Zhang describes individual pipettes 40, as can be seen in Figure 11 of Zhang. Zhang describes that the pipette body 40 is pre-filled with the liquid 48, which consists of a pharmaceutical or cosmetic substance.¹ The liquid 48 may be comprised of an aqueous solution, a true solution, oil, solvent, emulsion, cream, ointment, lotion, suspension, paste, jelly, syrup, balm or any other similar substance that may be transported and/or stored in a container.² However, Zhang fails to disclose or suggest a kit that includes: (1) a plurality of applicators containing *different* test substances and (2) *a housing in which the applicators are housed*. Instead, Zhang merely describes that individual pipettes 40 can be individually filled. Indeed, the Office Action acknowledges that “Zhang fails to disclose a housing having a plurality of applicators containing different substances.”³

The Office Action attempts to cure the deficiency in Zhang by applying Muhar, stating that “Muhar teach a kit having a housing with compartments for containing different test substances (40, 74). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a plurality of applicators each with a different test

¹ See Zhang, at col. 5, lines 19-20.

² See Zhang, at col. 5, lines 20-25.

³ See the outstanding Office Action at page 3, lines 4-5.

substance in a housing having compartments as taught by Muhar in order to create a treatment kit to raise the awareness of a treatment choice to a consumer (Col. 5, lines 47 - 56).”⁴ However, Muhar fails to disclose or render obvious a plurality of *applicators* containing *different* test substances.

Figure 1 of Muhar illustrates a pharmaceutical kit 10 that includes a container 14 in which is provided a packet of dispensing swabs 28, a bottle 40, and a tube 74.⁵ Muhar describes that liquid iodine 70 is located in the bottle 40, and that a quantity of zinc oxide 90 is located in the tube 74.⁶ Muhar further describes that the dispensing swabs 28 are individually used to dispense the liquid iodine 70 from the bottle 40.⁷ Thus, Muhar does not disclose a plurality of *applicators* containing *different* test substances, but instead describes a tube that contains a first substance, a bottle that contains a second substance, and a plurality of dispensing swabs that are changed between utilizations of the bottle.

Accordingly, even the combined teachings of Zhang and Muhar fail to disclose, suggest or render obvious all of the features of independent Claim 1. It is submitted that independent Claim 1 and the claims depending therefrom are in condition for allowance.

With respect to the rejection of dependent Claims 7 and 8 as obvious over Zhang in view of Muhar and Zygmunt, Zygmunt fails to cure the deficiencies in the combination of Zhang and Muhar discussed above with respect to Claim 1. Accordingly, it is submitted that dependent Claims 7 and 8 are in condition for allowance for at least the same reasons as Claim 1, from which they depend.

⁴ See the outstanding Office Action at page 3, lines 5-10.

⁵ See Muhar, at col. 4, lines 11-62.

⁶ See Muhar, at col. 4, lines 52-64.

⁷ See Muhar, at col. 4, lines 29-51.

With respect to the rejection of dependent Claims 9 and 10 as obvious over Zhang in view of Muhar and Barabino, Barabino fails to cure the deficiencies in the combination of Zhang and Muhar discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 9 and 10 are in condition for allowance for at least the same reasons as Claim 1, from which they depend.

With respect to the rejection of dependent Claims 11 and 12 as obvious over Zhang in view of Muhar and Tobin, Tobin fails to cure the deficiencies in the combination of Zhang and Muhar discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 11 and 12 are in condition for allowance for at least the same reasons as Claim 1, from which they depend.

The rejection of Claims 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 and 81-83 under 35 U.S.C. § 103(a) as being unpatentable over Zhang in view of Schindler is traversed.

Claim 30 relates to an evaluation or diagnostic kit. The kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Amended Claim 30 incorporated the subject matter of Claim 31, and recites that the kit further includes at least two test substances with at least one compound at concentrations *varying by a factor of at least two* from one applicator to another.

Claim 71 relates to a system for evaluating a sensitivity. The system includes a packaging and a plurality of tubes provided in the packaging. Claim 71 recites that the tubes include different test substances or test substances with *at least one compound at different concentrations*. Amended Claim 71 further recites that the packaging includes a housing in which the tubes are housed.

As discussed above with reference to independent Claim 1, Zhang fails to describe a kit that includes a plurality of applicators, much less kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Figure 7 of Schindler illustrates a kit 60 that includes a tweezers 62, a compressed applicator 14 with a withdrawal tether 18 attached thereto, and a pair of fluid-injecting devices 64 having plugs 66 inserted into the distal ends thereof.⁸

With respect to independent Claims 30 and 71, the Office Action states that “Schindler et al. teach the use of at least two substances with at least one compound at concentrations varying by a factor of at least two from one to another, the substance being a stimulating agent for stimulating a peripheral nervous system (Col. 1, lines 58 - 63).”⁹ The cited portion of Schindler states that:

For example, solution concentrations on the order of 0.5% Tetracaine have been used in ophthalmic applications, concentrations of 1 to 2% have been used in the mouth or nose and applied as a spray, and 0.1 to 0.5% solutions have been used in spinal or epidural applications.

However, regardless of whether the background of Schindler describes that different concentrations can be used for different types of applications, Schindler does not disclose that a *single kit* includes a plurality of tubes provided in a packaging in which at least two test substances with at least one compound at concentrations varying by a factor of at least two from one applicator to another, as recited in Claim 30. Nor does Schindler disclose a *single kit* that includes a plurality of tubes in which the tubes include different test substances or test substances with at least one compound at different concentrations, as recited in Claim 71.

⁸ See Schindler at col. 7, lines 57-61.

⁹ See the outstanding Office Action at page 6, lines 9-11.

Instead, Schindler describes, from column 7, line 63 to column 8, line 17, a kit 60 that includes a pair of fluid-injecting devices 64 that each include the *same compound* at the *same concentration*. Indeed, acknowledging that the additional injector simply provides more of the same substance, Schindler states that “[o]f course one device 64 will suffice if its reservoir has sufficient capacity to accommodate enough anesthetic solution for performing the anesthetizing procedure.”¹⁰

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or suggest the features of independent Claims 30 or 71. It is submitted that Claims 30 and 71, and the claims depending therefrom, are in condition for allowance.

With respect to the rejection of dependent Claims 39, 40 and 77 as obvious over Zhang in view of Schindler and Zygmunt, Zygmunt fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to either of Claims 30 or 71. Accordingly, it is submitted that dependent Claims 39, 40 and 77 are in condition for allowance for at least the same reasons as amended Claims 30 and 71, from which they respectively depend.

With respect to the rejection of dependent Claims 41 and 42 as obvious over Zhang in view of Schindler and Barabino, Barabino fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is submitted that dependent Claims 41 and 42 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

¹⁰ See Schindler, at col. 7, lines 65-67.

With respect to the rejection of dependent Claims 43 and 44 as obvious over Zhang in view of Schindler and Tobin, Tobin fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is submitted that dependent Claims 43 and 44 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

With respect to the rejection of dependent Claims 31-35 as obvious over Zhang and Schindler in view of Barr, Barr fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is submitted that dependent Claims 32-35 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

With respect to the rejection of dependent Claim 75 as obvious over Zhang in view of Schindler, Lewis, Ohsumi, neither Lewis nor Ohsumi cures the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 71. Accordingly, it is submitted that dependent Claim 75 is in condition for allowance for at least the same reasons as amended Claim 71, from which it depends.

With respect to the rejection of dependent Claims 78 and 79 as obvious over Zhang in view of Schindler and Lewis, Lewis fails to cure the deficiencies in combination of Zhang and Schindler discussed above with respect to amended Claim 71. Accordingly, it is submitted that dependent Claims 78 and 79 are in condition for allowance for at least the same reasons as amended Claim 71, from which they depend.

With regard to withdrawn Claims 2, 3, 14-16, 21, 23-25, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as these claims

depend from Claims 1, and therefore include the subject matter recited in Claim 1, which is believed to be allowable.

With regard to withdrawn Claims 46-48, 53, 55, and 56, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as these claims depend from Claim 30, and therefore include the subject matter recited in Claim 30, which is believed to be allowable.

With regard to withdrawn Claim 72, it is respectfully requested that this claim be rejoined and allowed in accordance with MPEP §821.04, as this claims depends from Claim 71, and therefore includes the subject matter recited in Claim 71, which is believed to be allowable.

Should the Examiner continue to disagree with the above distinctions, Applicant respectfully requests that the Examiner provide an explanation via Advisory Action pursuant to M.P.E.P. § 714.13 specifically rebutting the points raised herein for purposes of facilitating the Appeal process.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-25, 30, 32-56, and 71-83 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Steven P. Weihrouch
Attorney of Record
Registration No. 32,829

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/07)

Christopher A. Bullard
Registration No. 57,644